

UNITED STATES DISTRICT COURT  
SOUTHERN DISTRICT OF NEW YORK

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CHAIM KATZ,  
individually and on behalf of a class,

Plaintiffs,

: COMPLAINT CLASS ACTION

v.

545 GRAND FOOD CORP. and  
INSTANT MONEY SERVICE, INC.

Defendants.

08 CIV. 7426

JUDGE KARAS

INTRODUCTION

1. Plaintiff, Chaim Katz, brings this action against defendants 545 Grand Food Corp., and Instant Money Service, Inc. for violation of the Electronic Funds Transfer Act.

JURISDICTION AND VENUE

2. This Court has jurisdiction under 15 U.S.C. §1693m (Electronic Funds Transfer Act), 28 U.S.C. §1331 and 28 U.S.C. §1337.

3. Venue is proper in this district because defendants do business here and all events at issue occurred here.

PARTIES

4. Plaintiff is a resident of New York.

5. Defendant 545 Grand Food Corp. is a New York corporation which

operates a Fine Fair store at 545 Grand Street, New York, NY 10002.

6. Defendant Instant Money Service, Inc., is a New York corporation. Its office is located at 336 South Fulton Avenue, Mount Vernon, NY 10553.

**FACTS**

7. Defendants operate an automated teller machine (ATM) at 545 Grand Street, New York, NY 10002.

8. Defendants 545 Grand Food Corp. and Instant Money Service, Inc. are jointly involved in the operation of the ATM.

9. On May 30, 2008, plaintiff used the ATM.

10. Plaintiff does not have a bank account with either of the defendants.

11. There was no notice at or near the ATM station that a fee would or may be charged. A series of the photographs of the ATM are in Exhibit A.

12. Defendant's machine charged plaintiff \$1.50. A redacted copy of the receipt issued to plaintiff is attached as Exhibit B.

**VIOLATIONS COMPLAINED OF**

13. The Electronic Funds Transfer Act, 15 U.S.C. §1693b(d) (EFTA), and implementing Federal Reserve Regulation E, 12 C.F.R. § 205.15, require an ATM operator such as defendant to provide notice to consumers that the operator will or may impose a fee on consumers for conducting a transaction at an ATM. One notice must be posted on or near the

ATM. This notice is in addition to any that appear on the ATM screen.

14. The EFTA, 15 U.S.C. §1693b(d)(3)(c), and Regulation E, 12 C.F.R. §205.16(e), prohibit the imposition of a fee for using an ATM if the notice requirements are not met.

**CLASS ALLEGATIONS**

15. Plaintiff brings suit on behalf of a class, pursuant to Fed.R.Civ.P. 23(a) and (b)(3).

16. The class consists of (a) all persons (b) who on or after a date one year prior to the filing of this action, and on or before a date 20 days after filing of this action (c) were charged a fee for use of defendants' ATM at 545 Grand Street, New York, NY 10002.

17. The number of class members is so numerous that joinder is impracticable.

18. On information and belief, there are more than 50 persons who on or after a date one year prior to the filing of this action, and on or before a date 20 days after filing of this action were charged a fee for use of defendants' ATM at 545 Grand Street, New York, NY 10002.

19. There are questions of law and fact common to the class which predominate over any questions affecting only individual class members. The common questions include:

- a. Whether defendants' ATM was posted with a notice.
- b. Whether defendants violated the EFTA.

20. Plaintiff's claims are typical of the claims of the class members. All are

based on the same facts and legal theories.

21. Plaintiff will fairly and adequately protect the interests of the class.

Plaintiff has retained counsel experienced in class action and consumer credit litigation.

22. A class action is superior to other available methods for the full and efficient adjudication of the controversy. Individual actions are not economically feasible.

WHEREFORE, the Court should enter judgment in favor of plaintiff and the class and against defendants for:

- a. Statutory damages;
- b. Actual damages;
- c. Attorneys' fees, litigation expenses and costs of suit; and
- d. Such other relief as this Court deems proper.



Abraham Kleinman (AK-6300)

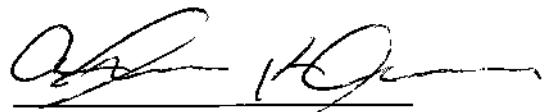
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Pro hac vice admission to be applied for.

**JURY DEMAND**

Plaintiff demands trial by jury.



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Abraham Kleinman (AK-6300)

**EXHIBIT A**



